

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In re Application of	)	
	)	
Kemp/Mesquite, Inc.	)	
	)	File No. BPFTB-19990107TD
For a Construction Permit for a New FM Booster	)	
Station on Channel 248 in Henderson, Nevada	)	
	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 6, 2002**

**Released: August 9, 2002**

By the Commission:

1. The Commission has under consideration an Application for Review and a Motion for Stay, filed May 18, 2001, by Lotus Broadcasting Corp. ("Lotus"), licensee of station KXPT(FM), Las Vegas, Nevada, and related pleadings.<sup>1</sup> Lotus requests review and stay of an April 18, 2001, decision by the Assistant Chief, Audio Services Division, Mass Media Bureau ("Staff Decision") that denied Lotus' May 27, 1999, Petition to Deny and January 24, 2001, Motion for Referral to the Commission, and granted the above-captioned application for a new FM booster station ("KVEG-FM1") in Henderson, Nevada. For the reasons stated below, we deny Lotus' Application for Review and dismiss the Motion for Stay as moot.<sup>2</sup>

2. **Background.** The gravamen of Lotus' Petition to Deny was that the then-proposed FM booster station would interfere with second-adjacent channel station KXPT(FM) and with KVEG(FM), Mesquite, Nevada, the primary station whose signal KVEG-FM1 proposes to retransmit, in violation of 47 C.F.R. § 74.1203. However, 47 C.F.R. § 74.1203 prohibits *actual*, not predicted, signal interference.<sup>3</sup> As the Staff Decision noted, since KVEG-FM1 was not currently operating and therefore not causing interference to either KXPT(FM) or KVEG(FM), 47 C.F.R. § 74.1203 was inapplicable. The Staff Decision further stated that if KVEG-FM1, in fact, caused actual interference to the direct reception of any broadcast station, the licensee would be required to remedy such actual prohibited interference, or cease operation, in accordance with the rule.<sup>4</sup> Lotus also argued in the Petition to Deny that Kemp/Mesquite, Inc. is not an existing corporation under Nevada law and therefore, unqualified to become a Commission licensee. On review, Lotus raises only its corporate qualification argument.

<sup>1</sup> Kemp/Mesquite Broadcasting, Inc. filed an opposition to the Motion for Stay on May 25, 2001, and an opposition to the Application for Review on June 4, 2001. Lotus filed a reply on June 20, 2001.

<sup>2</sup> See 47 C.F.R. § 1.102(b)(3).

<sup>3</sup> 47 C.F.R. § 74.1203 ("[An] authorized FM translator or booster station will not be permitted to continue to operate if it causes any actual interference to the transmission of any authorized broadcast station").

<sup>4</sup> Additionally, the Staff Decision correctly noted that the rules specify that booster stations provide protection to first-adjacent channel stations, not to second-adjacent channel stations, such as KXPT(FM). See 47 C.F.R. § 74.1204(i).

3. **Discussion.** “[A]n FM broadcast booster station will be authorized only to the licensee or permittee of the FM radio broadcast station whose signals the booster station will retransmit . . . .”<sup>5</sup> In the instant case, Kemp/Mesquite Broadcasting, Inc. (“Kemp”) is the permittee of primary station KVEG(FM). Lotus acknowledges that Kemp is a legally registered Nevada corporation. The booster station applicant name, however, was listed on the booster application as “Kemp/Mesquite, Inc.”

4. In opposition, Kemp states that the name “Kemp/Mesquite, Inc.” had been mistakenly used in a number of Commission filings. This includes its applications for construction permits for KVEG(FM) and KVEG-FM1. Kemp sought to correct this error in a September 26, 2000, filing, when counsel for Kemp advised the Commission that the permittee of primary station KVEG(FM) is “Kemp/Mesquite Broadcasting, Inc.” This correction was made following the grant of the KVEG(FM) construction permit but during the pendency of the booster station application. This notification, which did not involve a change in ownership requiring prior Commission approval, was appropriately communicated by letter from counsel.<sup>6</sup>

5. An independent review of records by Commission staff shows that Kemp consistently used the name “Kemp/Mesquite, Inc.” in filings for KVEG(FM) and KVEG-FM1 prior to September 2000. Subsequently, Kemp submitted an application for license to cover the KVEG-FM1 construction permit on July 30, 2001, listing the applicant’s name as Kemp/Mesquite Broadcasting, Inc. (File No. BLFTB-20010730ACQ). Further, staff review confirms that the ownership of the primary and booster stations is the same. The record provides no evidence that Kemp intentionally provided the Commission with information that it knew to be incorrect and does not support a finding that Kemp’s original application submission rose to the level of intentional misrepresentation.<sup>7</sup> We conclude that Kemp’s misdesignation of the applicant’s name on the construction permit application was inadvertent, ministerial in nature, and corrected upon discovery. Kemp’s initial error did not render the booster application ungrantable.

6. Accordingly, IT IS ORDERED that the May 18, 2001, Application for Review filed by Lotus Broadcasting Corp. IS DENIED and the May 18, 2001, Motion for Stay filed by Lotus Broadcasting Corp. IS DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>5</sup> 47 C.F.R. § 74.1232(f).

<sup>6</sup> See General Instructions to FCC Form 323, Ownership Report for Commercial Broadcast Stations, Section I, item 5.

<sup>7</sup> See, e.g., *Greater Muskegeon Broadcasters, Inc.*, 11 FCC Rcd 15464, 15472-73 (1996) (existence of an inaccuracy in an application, without any indication that the applicant meant to deceive the Commission, does not elevate such a mistake to the level of an intentional falsehood or otherwise raise a question that must be resolved in an evidentiary hearing); *Garrett, Andrews, & Letizia, Inc.*, 86 FCC 2d 1172, 1180 (Rev. Bd. 1981) *mod. on other grounds*, 88 FCC 2d 620 (1981) (burden on petitioner to demonstrate motive to deceive or conceal because Commission will not infer improper motive from application errors, inconsistencies or omissions accompanied by speculation that lacks factual support).